



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**

**LAND CASE NO. 6 OF 2019**

**PAMELA ONYANGO OSANO.....PLAINTIFF**

**VERSUS**

**GEOFFREY MOMANYI.....DEFENDANT**

**JUDGMENT**

By a plaint dated 18<sup>th</sup> January 2019 the plaintiff herein sued the defendant seeking for orders of a permanent injunction against the defendant and an order for eviction of the defendant plus costs of the suit.

The plaintiff contemporaneously filed an application for temporary injunction with the plaint but later withdrew it to fast-track the hearing of the case.

**PLAINTIFF'S CASE**

PW1 gave evidence and stated that she is the wife of the late Joeson Muchiri Macharia having been married under customary law in 1991. It was her testimony that in 1993, together with her late husband they bought Eldoret Municipality Block 5/ 733 and in 2001 built the main house and subsequently a servant's quarter on the suit property.

PW1 testified that in 2001 the Defendant was hired as a casual labourer to help in the construction works and subsequently in 2004 when the Plaintiff and her late husband started living in the main house on the suit property, the Defendant was employed as a shamba boy and a caretaker at a monthly upkeep was Kshs. 5,000/-. That the Defendant was later allowed to live in the servant's quarters and later moved his family to the said servant's quarters.

It was PW1's further evidence that in 2008 when the PW1's late husband was murdered in the main house of the suit property, his brothers James Mwangi Macharia and Francis

Muraya Wachira, with the help of the Defendant and one Tom Sospeter loaded all the household items and moved them to Nyandarua and also threatened to inflict harm on PW1 if she dared to attend her late husband's burial.

PW1 testified that she filed Eldoret High Court Succession Cause No. 488 of 2015 and upon its successful conclusion she was issued with a grant which was confirmed in her favour on 18<sup>th</sup> June, 2018 where she was given the whole of the suit property. That on the strength of the aforementioned Grant, the PW1 proceeded to lease out the suit property to Pine Tree Nursery School whereby the Defendant sought to interfere with the lease arrangement necessitating the filing of the instant suit.

PW1 was also issued with Police Abstracts Numbers OB/22/13/05/2016 and OB/34/04/12/2018 in relation to the loss of the Certificate of Lease over the suit property and numerous other parcels of land belonging to the late husband. PW 1 produced 8 exhibits namely certificate of confirmation of grant dated 18<sup>th</sup> June 2018, Police Abstract dated 4<sup>th</sup> December 2018, Grant of letters of administration intestate dated 11<sup>th</sup> May 2015, police abstract dated 13<sup>th</sup> May 2016, letter to the Law Society of Kenya dated 8<sup>th</sup> December 2016, official receipt for official search, official receipt for statutory declaration for loss of the title, copy of the defendant's defence an paragraph 8 indicating the titles are with James Mwangi and Francis Wachira.

PW1 prayed for the orders as claimed in the plaint with costs.

On cross examination PW1 reiterated that she is the wife of the deceased Muchiri Wachira and had been married vide customary law. She also confirmed that she had a grant of letters of administration in respect of the deceased estate. PW1 also denied that the signature in the agreement that the defendant showed her was her late husband's. It was further her evidence that there was a succession cause no 87 of 2008 which file got lost and no orders had been granted on the same where the defendant had filed an objection.

PW2 and PW3 gave evidence and confirmed that PW1 was married to the deceased and that the Defendant gained access to the suit property due to the fact that he was employed as a shamba boy and a caretaker. PW2 stated that the defendant resides on the suit plot having been employed as a caretaker and not as an owner of the plot.

PW3 stated that being a family friend who was close to the deceased would have known if the deceased sold the land to the defendant. That the plot belonged to the plaintiff upon the demise of the late husband.

### **DEFENDANT'S CASE**

DW1 produced orders dated 22<sup>nd</sup> January 2019 in respect of Succession Cause No 488 of 2015 in which there were orders of temporary injunction restraining the plaintiff from interfering with the suit land dated 9<sup>th</sup> January 2019 for a period of 14 days.

DW2 adopted his statement and stated that the suit property was given to him by the deceased who considered him to be like his son vide a duly executed Share Agreement dated 16<sup>th</sup> July, 2004 and that he gained access to the main house on the suit property in 2002.

It was DW2's evidence that he filed Summons of Revocation or Annulment of Grant in Eldoret High Court Succession Cause No. 87 of 2008 and the aforesaid Application is yet to be heard and determined on its merits. That PW1 had no capacity to lease out the property to Pine Tree Nursery School as she is not the lawful proprietor.

DW2 also stated that James Mwangi Macharia and Francis Muraya Wachira have the Certificate of Lease of the suit property hence the allegation of loss is not accurate. During the examination of the DW2 he confirmed that he did not purchase the suit property and his attempts at producing a copy of the Share Agreement was objected to by Counsel for the Plaintiff. The objection was upheld by the Court and a copy of the Share Agreement was thus not admitted into evidence. The defendant urged the court to dismiss the plaintiff's case with costs.

### **ANALYSIS AND DETERMINATION**

The issues for determination are as to whether the plaintiff has locus standi to bring this suit against the defendant, whether the plaintiff is entitled to the orders sought for injunction and eviction of the defendant.

The plaintiff filed Succession Cause No 488 of 2015 of which she was issued with letters of administration on 11<sup>th</sup> May 2016 and the grant was confirmed on 18<sup>th</sup> June 2018 which the plaintiff produced as exhibits before the court. As at the time of filing this suit the plaintiff was the administrator of the estate of Joeson Muchiri Wachira.

This grant has not been revoked by a court of law. I therefore find that the plaintiff has locus standi to bring this suit.

On the second issue as to whether the plaintiff is entitled to the orders prayed for injunction and eviction of the defendant, the plaintiff gave evidence and stated that she is the widow of the late Joeson Muchira Wachira and an administrator of the estate as evidenced by the confirmed grant of letters of administration dated 18<sup>th</sup> June 2018. As a widow and administrator of the deceased estate, she is entitled to administer the estate diligently.

From the evidence on record the defendant claimed that the deceased gave him the suit land and did not produce any documentary evidence to show that, that was the intention of the deceased. The plaintiff and PW2 and 3 stated that the defendant was brought in as a shamba boy and later a caretaker of the construction and resided in the servant's quarter. The two witnesses confirmed that the plaintiff was the wife of the deceased and that they constructed the suit property together.

The defendant indicated that he filed an application for revocation of the grant whereby the court gave orders of temporary injunction restraining the plaintiff from interfering with the suit land. I have looked at the order which was granted by the High Court and it specifically ordered that the temporary injunction was for a period of 14 days from 10<sup>th</sup> of January 2019. The same lapsed after a period of 14 days and the defendant did not tell the court whether the same were extended. When orders lapse then it means as it were that the previous status quo is reinstated. That in effect means that the plaintiff is the administrator of the estate of the suit land.

The defendant also alluded to Succession Case No. 87 of 2008 which was filed by James Muraya Wachira and Francis Muraya Wachira whereby the defendant filed an objection but the defendant has not told the court the outcome of his objection. James Muraya Wachira and Francis Wachira who are brother in laws of the plaintiff are not parties to this suit. The plaintiff indicated to the court that the file got lost and has never been traced.

From the evidence on record and the confirmed grant in favour of the plaintiff which allocated her plot No Eldoret Municipality Block 5/733 as a whole, I find that the plaintiff is entitled as an owner of the suit land as the grant has not been revoked. The defendant therefore is on the suit property illegally and has no proprietary rights to the suit property. The defendant wants to reap where he did not sow by claiming that the deceased husband to the plaintiff gave him shares of the suit land. The defendant also admitted that he did not buy the suit land.

It should also be noted that the defendant did not apply that this case be stayed pending issues of revocation of grant. The defendant further did not claim any proprietary rights to be determined in his favour. He only asked for the dismissal of the plaintiff's case. After the dismissal how was he going to assert his rights.

Section 93 (1) of the Law of succession provides as follows:

(1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after commencement of this Act.

The plaintiff has a valid grant of letters of administration which allows here to use the property as she wishes without interference.

Having considered the pleadings, the evidence and submission by counsel and find that the plaintiff has proved her case against the defendant to the required standard. I therefore issue the following orders.

- a) A permanent injunction is hereby issued restraining the defendant, his servants, agents or any other persons from interfering with the running and operations of Pine trees Nursery School, sub leasing, subletting, selling, transferring, charging, claiming ownership of parcel of land known as ELDORET MUNICIPALITY BLOCK 5/733.
- b) The defendant to give vacant possession of the suit land within 45 days failure to which eviction to issue.
- c) Defendant to pay costs of the suit.

**DATED and DELIVERED at ELDORET this 2<sup>ND</sup> OF FEBRUARY, 2021**

***M. A. ODENY***

***JUDGE***